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The Honorable Julius Genachowski
Chairman Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

RE: NPRM: *Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges;* CG Docket Nos., 11- 116 and 09-158, and CC Docket No. 98-170 ("Cramming")

Dear Chairman Genachowski,

The pervasive problem of "cramming", the unauthorized placement of charges on a telephone bill, has been present since the late 1980's. While the idea of third party billing was in concept consumer friendly, the result has been contrary. Third party billing was conceived when local exchange carriers provided local telephone service and AT&T provided the long distance services following the divestiture of AT&T. However, in an effort to level the playing field among long distance carriers and provide consumers with competitive choices for long distance service, local exchange carriers were required to provide billing and collection services for other companies that offered long distance services.[1] In 1986, the FCC concluded that carriers would be able to hold down administrative costs and offer packages of services to subscribers at a more competitive price if the local exchange carriers were billing and collecting for the third party services. Once the pandora's box had been opened to third party billing, vendors of products other than long distance services seized the opportunity to take advantage of consumers. From this seemingly pro-consumer order from the FCC, the practice of cramming was born.

While there are those that benefit from third party billing practice within the telecom industry, the end consumer of services is more often the victim of unsavory business practices meant to confuse and deceive. As with many predatory business practices, the victims are often the elderly and uneducated. Though skilled cramming techniques have been utilized to target all demographic groups. Most likely even individuals with the credentials necessary to work for the FCC. Thousands of complaints are logged every year with the FCC, BBB, FTC, state attorney general offices and

[1] Federal Communications Commission, *Detariffing of Billing and Collection Services, Report and Order*,102 F.C.C.2d 1150 (Jan. 29, 1986).

telephone service providers. The problem is not limited to individuals, many businesses are victims of cramming and are often more susceptible to allowing an unauthorized charge to go unnoticed. The business victims include the US Postal Service and AT&T, a provider of telecom services. The cramming problem is so prevalent, it has spawned a new industry to audit telephone bills. The methods used include, but are not limited to: recurring small amounts often under $2 to avoid detection; labeling unauthorized charges with titles that appear to be legitimate telecom services[2]; cramming bills paid by automatic payment consumers; and cramming electronic bills that are not easily itemized for the consumer prior to payment.

To date much debate and consternation has ensued regarding the cramming problem. In 1998, the FCC along with the local exchange providers and companies that provide billing and collection service for them, adopted an industry voluntary code of best practices designed to prevent cramming.[3] This step was the formal acknowledgment that cramming of telephone bills was a significant consumer issue. Along with the industry best practices, the FCC released Truth in Billing requirements to bolster the best practices of the industry.[4] Despite these efforts, cramming remains a nationwide consumer problem as evidenced by the Staff Report "Unauthorized Charges on Telephone Bills", nicknamed the "Rockefeller Report" after Chairman Senator Jay Rockefeller of the Senate Committee on Commerce, Science, and Transportation.[5]

The practice of cramming thrives for two reasons: while illegal it's necessary predecessor (third party billing) is not sufficiently regulated and it is extremely profitable for third party vendors, billers/collectors and the telephone companies. Third party charges on telephone bills occur more than 300 million times per year generating more than $2 billion dollars of charges. The exact number of unauthorized charges is unknown, but the Rockefeller Report suggests backed by ample evidence that a large percentage are in fact unauthorized.[6] Telephone companies profit from cramming by receiving a fee from the third party vendor for each charge placed on a customers bill. Additionally, telephone companies often receive a fee for handling customer complaints related to a third party vendor charge. The effect of this practice shifts the priority of the telephone company from the consumer to the third party vendor and creates a financial incentive to ignore the validity of a vendor despite the high likelihood that they are in fact a crammer. Adding to the argument for further regulation is the fact that telephone companies themselves are fully aware of the frequency and severity of the cramming

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[2] Press Release, *Rockefeller Probe Into Bogus Charges on Consumer Phone Bills Expands* (Mar. 31, 2001).

[3] *See* Anti-Cramming Best Practice Guidelines, *available at* http://transition.fcc.gov/Bureaus/Common_Carrier/Other/cramming/cramming.html

[4] *See First Truth-in-Billing Order*, 14 FCC Rcd at 7506, para 24.

[5] *See* Unauthorized Charges on Telephone Bills, *available at* http://commerce.senate.gov/public/?a=Files.Serve&File_id=3295866e-d4ba-4297-bd26-571665f40756

[6] Ibid, p. ii.

problem. The number of consumer inquiries over an 8 month period in 2010 regarding charges for third party services that were not authorized was greater than 200,000.[7] Further, the number of complaints is drastically underrepresented due to the aforementioned problem of unauthorized charge detection due to ambiguous and deceitful billing itemization. These facts along with many specific examples of cramming located in the Rockefeller Report illustrate the ineffectiveness of prior voluntary industry best practice measures and demand further regulation to protect consumers from telephone bill cramming.

The cramming problem encompasses 3 separate issues of importance: prevention, detection, and resolution. First, prevention is the best option. Industry has had considerable opportunity to voluntarily curb the practice of cramming and has failed to do so. Currently, the burden of cramming is thrust upon the consumer, not the telecom industry. Telephone companies continue to profit while consumers deal with the fallout of cramming. By adopting rules that fall short of an outright ban on third party billing, the FCC will only increase the administrative burden associated with the enforcement of anti-cramming measures. Therefore, the best way to prevent cramming from occurring is to adopt rules that place and outright ban on all third party billing practices related to telephone bills. Short of a prohibition on third party billing, the next best method that could help prevent cramming of telephone bills is the adoption of rules that require telecom carriers to provide consumers with the ability to block third party charges on their telephone bills. Unfortunately, the proposed rule only regulates carriers that offer the option to block third party charges by requiring them to provide notification of the blocking service to the consumer. This is wholly inadequate, as the carriers are not required to provide the blocking service in the first place and will most likely result in a increase in cramming activity as carriers will opt for the path of least regulation by not offering blockage of third party billing at all. A prevention alternative that is less likely to succeed than a ban on third party billing is a rule establishing blocking of third party charges as the default and requiring consumers to "opt in" to allow third party billing on their telephone bills. If blocking of charges is deemed more palatable to the industry and thus adopted by the FCC, it is imperative that blocking of third party charges be offered to consumers free of charge. Otherwise, the telecom carriers would merely be quasi-extorting from the consumers. A consumer would be faced with choosing between the risk of unauthorized charges appearing on their telephone bill or paying a fee to block the unauthorized charges from vendors whose business was solicited by the telecom carrier.

Among the proposed rules, the FCC has asked for comment on the requirement that non-carrier third party charges be "placed in a section separate from charges assessed by carriers and their affiliates on wireline telephone bills".[8] While making the process of

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[7] Ibid, p. iv.

[8] In the Matter of Empowering Consumers to Prevent and Detect Billing for Unauthorized Charges ("Cramming"), CG Docket No. 11-116, Consumer Information and Disclosure, CG Docket No. 09-158, Truth-in-Billing and Billing Format, CC Docket No. 98-170, *Notice of Proposed Rulemaking* ("NPRM"), July 12, 2011. *at* para. 45.

detecting third party vendor charges on a telephone bill easier is admirable, it does nothing to decrease the burden on the consumer. Additionally, the deceptive nature of the charge labeling will continue to confuse consumers as to the validity of the charges. All this rule ultimately will accomplish is to make it incumbent on the consumer to not get tricked by their telephone bill. The FCC has also sought comment on the bundling of services although it does not seek to change the manner in which charges for bundled services may be billed. Currently, telephone companies may "bundle" services into one charge on the bill even if some of the services are provided by companies other than the telecom carrier. The abuse potential of continuing this practice is undeniable. Third party vendors and telecom carriers can "bundle" services under one price, label it bundle X, and circumvent any rules adopted to help consumers detect unauthorized charges. The proposed rules also include a requirement that the telephone carriers include on their bills and website the FCC contact information for submission of complaints. Also the FCC has sought comment on requiring inclusion of third party vendors contact information on the consumer's bill. These "detection controls" equate to showmanship as the burden still sits squarely upon the consumer. Ultimately, at the point of detection, much if not all of the damage of cramming is no longer curable. The burden must be placed on the industry to prevent cramming in the first place.

Thus under the proposed rules, cramming will continue to plague the public. Once detected, resolution of a case of cramming may in theory be aided by the inclusion of third party vendor contact information on telephone bills. However, these third party vendors are often "dummy" corporations operating out of a post office box with no customer services. The FCC should adopt rules that require the telephone carrier billing the consumer to immediately credit the consumer the third party charge upon challenge by the consumer. The telephone carrier can then at their expense investigate the validity of the charge, thereby relieving the consumer of the burden of spending countless hours tracking down an intentionally had to find third party vendor. After all the telephone carrier by the nature of their contractual agreement with the third party vendor has direct access to the vendor. Additionally, the FCC should adopt rules that require reporting of cramming complaints to the FCC, with further reporting of how the complaints have been resolved.

Unfortunately, the rules proposed will have minimal effect on cramming. The rules have all but completely ignored wireless, VOIP, and broadband services as potential targets of bill cramming. There is strong evidence that more and more consumers are using telecommunications other than wireline service. Therefore, to be effective and provide consumer protection regardless of technology choice, any rules adopted to stop the practice of cramming must include these other communication carriers. The only method of eliminating cramming is to place an outright ban on the practice of third party billing by telephone carriers. To the extent that the FCC chooses not to use it's legal authority to ban third party billing, the following measures should be adopted:

(1) Require the telephone carrier to block all third party charges unless the consumer has knowingly and intentionally initiated the removal of the block. The removal of the block must be verified by an independent third party. The block of third party charges must be offered at no cost to the consumer.

(2) Require the telephone companies to place all previously authorized third party charges in a separate section with highlighted print, clearly and conspicuously noting the presence of third party charges on the bill.

(3) Require that the telephone bill provides FCC contact information, an itemized breakdown of all bundled services and explicit information on the process of challenging an unauthorized charge.

(4) Require the telephone carrier to immediately remove any third party charge that the consumer alleges to be unauthorized. If the telephone carrier does not comply and cannot provide proof of third party verification, then penalties should be forthcoming.

(5) Report all complaints of cramming and resolutions of said complaints to the FCC.

I appreciate the opportunity to provide comment on the rulemaking designed to curb the illegal billing practice of cramming. There exists little if any evidence that third party billing benefits the consumers of telephone services. I ask that the FCC carefully consider the harm that the practice of cramming has inflicted upon the public and the fact that the only benefactors of third party billing are the vendors, billers/collectors, and the telephone companies. Consumers should not be left to fend for themselves against a savvy profit driven industry. Please ban the practice of third party billing by telephone companies.

Sincerely yours,

Soren Campbell